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12 February 1970

OGC Has Reviewed

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: State Department Legal Concerns Re Laotian Operations

REFERENCE: Memo for DCI fr [ ] dtd 20 Jan 70, Same Subject

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1. This memorandum is for information only.

2. In the referent memorandum [ ] pointed out that a State Department lawyer in a memorandum of 22 December 1969 had taken the position that the Church Amendment apparently renders illegal the expenditure of funds for the "exploitation" activities conducted in the Army's Prairie Fire operation in south Laos.

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3. The Church Amendment which was adopted after lengthy Senate debate in secret session and in open session is a modification of the earlier Cooper Amendment and provides as follows:

In line with the expressed intention of the President of the United States, none of the funds appropriated by this Act shall be used to finance the introduction of armed ground combat troops into Laos or Thailand.

It is our view that the language does not prohibit the exploitation activities of Prairie Fire. We do not believe the words themselves so prohibit and particularly so in view of the context of the floor debate in which the language was adopted. The proponents of the Amendment on many occasions stated they did not intend to prohibit any activities then being conducted. Senator Church himself stated: "We are simply not undertaking to make any changes in the status quo."

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Date


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4. Apparently the State Department proposed that their view be incorporated in a joint State-DOD message to the Ambassador in Laos. At that time Defense Department lawyers disagreed with State Department's legal interpretation and the Joint Chiefs of Staff vigorously objected to any such views being sent to the Ambassador. As of yesterday, apparently that message has not left but there is no pressure to include the State Department's view.

5. I have discussed this in some detail with Maurice H. Lanman, Assistant General Counsel, OSD, and William Woodruff, Counsel, Senate Appropriations Committee. Both agree with the Agency view on this and think the State Department legal view is simply wrong.

6. As a matter of interest, I discussed with Messrs. Lanman and Woodruff the question of whether this Amendment was an unconstitutional limitation of the powers of the President as Commander-in-Chief. It has been Larry Houston's and the undersigned's view that while this is essentially a legal question, probably it is unconstitutional. Mr. Woodruff quite naturally argued that it was constitutional pointing out, among other things, that the President had signed the bill containing the wording. Mr. Lanman was more or less on the fence. In any event, all of us agree that this is a highly theoretical legal argument since the matter is essentially a political question. 25X1A

  
Deputy General Counsel

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